

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

SRINIVASA RAO GUBBALA,

Plaintiff,

v.

ABERCROMBIE & FITCH TRADING CO.,

Defendant.

Case No. 2:24-CV-00444-SDM-CMV

Judge Sarah D. Morrison
Magistrate Chelsey M. Vascura

ABERCROMBIE & FITCH TRADING CO., and
ABERCROMBIE & FITCH CO.,

Counterclaim Plaintiffs,

v.

SRINIVASA RAO GUBBALA

Counterclaim Defendant.

RULE 26(f) REPORT

Pursuant to Federal Rule of Civil Procedure 26(f), a meeting was held on May 7, 2024, and was attended by:

Baruch Gottesman, counsel for Plaintiff/Counter-Defendant Srinivasa Rao Gubbala,

Susan M. Kayser, counsel for Defendant/Counter-Plaintiffs Abercrombie & Fitch Trading Co. and Abercrombie & Fitch Co.,

Eric W. Lee, counsel for Defendant/Counter-Plaintiffs Abercrombie & Fitch Trading Co. and Abercrombie & Fitch Co.,

Counsel represent that, during the meeting, they engaged in a meaningful attempt to meet and confer on the matters outlined below.

1. CONSENT TO MAGISTRATE JUDGE

Do the parties consent to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c)?

_____Yes X_____No

2. INITIAL DISCLOSURES

Have the parties agreed to make initial disclosures?

X_____Yes _____No _____The proceeding is exempt under Rule 26(a)(1)(B)

Such initial disclosures shall be made by May 21, 2024.

3. VENUE AND JURISDICTION

Are there any contested issues related to venue or jurisdiction?

_____Yes X_____No

If yes, describe the issue: Not applicable.

If yes, the parties agree that any motion related to venue or jurisdiction shall be filed by Not applicable.

4. PARTIES AND PLEADINGS

- a. The parties agree that any motion or stipulation to amend the pleadings or to join additional parties shall be filed by June 7, 2024.
- b. If the case is a class action, the parties agree that the motion for class certification shall be filed by: N/A.

5. MOTIONS

- a. Are there any pending motion(s)?

_____Yes X_____No

If yes, indicate which party filed the motion(s), and identify the motion(s) by name and docket number: Not applicable.

- b. Are the parties requesting expedited briefing on the pending motion(s)?

_____Yes X_____No

If yes, identify the proposed expedited schedule:

Opposition to be filed by _____; Reply brief to be filed by _____.

6. ISSUES

Jointly provide a brief description of case, including causes of action set forth in the complaint, and indicate whether there is a jury demand:

Plaintiff/Counter-Defendant Srinivasa Rao Gubbala (“Mr. Gubbala”) seeks review of the December 8, 2023 Final Decision of the Trademark Trial and Appeal Board (“TTAB”) in Opposition No. 91255288 (“December 8, 2023 TTAB Final Decision”). The December 8, 2023 TTAB Final Decision barred registration of Mr. Gubbala’s bird mark subject of U.S. Trademark Application Serial No. 88555046 due to likelihood of confusion with Defendant/Counter-Plaintiff Abercrombie & Fitch Trading Co.’s trademark registrations for its bird designs.

Defendant/Counter-Plaintiff Abercrombie & Fitch Trading Co. and Counter-Plaintiff Abercrombie & Fitch Co. (collectively, “A&F”) requests that this Court dismiss Mr. Gubbala’s complaint with prejudice. A&F asserts a counterclaim seeking a declaratory judgment affirming the December 8, 2023 TTAB Final Decision denying registration of Mr. Gubbala’s bird mark due to likelihood of confusion with A&F’s bird marks. A&F also asserts counterclaims for trademark infringement, dilution, unfair competition, and deceptive trade practices based on state and federal law due to Mr. Gubbala’s use and attempts to register a bird mark design that is confusingly similar to A&F’s famous bird design trademarks, and Mr. Gubbala’s continued use and attempts to register such design even after A&F made him explicitly aware of A&F’s prior, strong, and extensive rights in A&F’s bird designs.

All parties demand trial by jury.

7. DISCOVERY PROCEDURES

- a. The parties agree that all fact discovery shall be completed by October 15, 2024.
The parties agree to schedule their discovery in such a way as to require all responses to discovery to be served prior to the cut-off date, and to file any motions relating to discovery within the discovery period unless it is impossible or impractical to do so. If the parties are unable to reach an agreement on any matter related to discovery, they are directed to arrange a conference with the Court. To initiate a telephone conference, counsel are directed to join together on one line and then call the Magistrate Judge’s chambers or provide the Court with a call-in number.
- b. Do the parties anticipate the production of ESI? X Yes _____No

If yes, describe the protocol for such production:

Mr. Gubbala and A&F (Mr. Gubbala and A&F, collectively, "Parties", and individually a "Party") agree to the production of electronically stored information ("ESI") and discoverable documents originating from hardcopy sources and attachments in single-page TIFF format (black and white, 300 dpi) with corresponding searchable OCR text, along with the below-listed metadata fields when available. The Parties will provide a standardized load file compatible with Relatively and with a Bates number field included in the load file to match text and metadata with TIFF images.

- a. Beginning Document Bates Number;
- b. Ending Document Bates Number;
- c. Beginning Family Bates Number (the first page of the first document in a family);
- d. Ending Family Bates Number (the last page of the last document in a family);
- e. Custodian or Source;
- f. All Custodians;
- g. Confidentiality Designation;
- h. Redacted (Y/N); and
- i. Text File Path (providing the location in the production load file for the text file).

All the foregoing shall be pursuant to the Federal Rules of Civil Procedure ("FRCP") and subject to the parties' forthcoming Stipulated Protective Order.

- c. Do the parties intend to seek a protective order or clawback agreement? Yes, the parties intend to seek a protective order and clawback agreement.

If yes, such order or agreement shall be produced to the Court by June 11, 2024.

8. DISPOSITIVE MOTIONS

- a. Any dispositive motions shall be filed by April 30, 2025.
- b. Are the parties requesting expedited briefing on dispositive motions?

 Yes X No

If yes, identify the proposed expedited schedule:

Opposition to be filed by _____; Reply brief to be filed by _____.

9. EXPERT TESTIMONY

- a. Primary expert reports must be produced by December 15, 2024.
- b. Rebuttal expert reports must be produced by January 31, 2025.
- c. All expert discovery shall be completed by February 28, 2025.

10. SETTLEMENT

On March 5, 2024, Defendant/Counter-Plaintiffs A&F sent a settlement proposal to Plaintiff/Counter-Defendant Srinivasa Rao Gubbala. On May 2, 2024, having received no response to their March 5, 2024 proposal, Defendant/Counter-Plaintiffs A&F sent an updated settlement offer to Mr. Gubbala's counsel.

On May 7, 2024, during the parties Rule 26(f) Conference, counsel for Mr. Gubbala informed counsel for A&F that Mr. Gubbala rejects A&F's March 5, 2024 settlement proposal. Counsel for Mr. Gubbala indicated that Mr. Gubbala will advise A&F know if Mr. Gubbala has a counter-proposal by May 20, 2024.

The parties agree to make a good faith effort to settle this case. The parties understand and agree that this case will be referred to an attorney mediator, or to the Magistrate Judge, for a settlement conference after initial disclosures are exchanged and prior to discovery. The Court refers cases to settlement throughout the year. The parties request the following month and year: July 2024.

The parties believe early non-binding mediation after initial disclosures are exchanged and prior to engaging in substantive discovery is appropriate given that the parties have already participated in fulsome discovery before the Trademark Trial and Appeal Board, and therefore are familiar with each other's arguments and evidence, and are able to evaluate this case prior to engaging in further discovery. The parties understand that they will be expected to comply fully with the settlement conference orders which require, *inter alia*, that settlement demands and offers be exchanged prior to the conference and that principals of the parties attend the conference.

11. RULE 16 PRETRIAL CONFERENCE

Do the parties request a scheduling conference?

X Yes, the parties would like a conference with the Court prior to it issuing a scheduling order. The parties request that the conference take place ___ in chambers X by telephone.

___ No, a conference is not necessary; the Court may issue a scheduling order after considering this Report.

12. OTHER MATTERS

Indicate any other matters for the Court's consideration: None.

Signatures:

Attorneys for Plaintiff/
Counterclaim Defendant:

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by s/ Eric W. Lee per e-mail authorization
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Date: May 14, 2024